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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**MALIBU MEDIA, LLC,**

Plaintiff,

- against -

**JOHN DOE subscriber assigned IP  
address 74.71.9.209,**

Defendant.

15 Civ. 4742 (LLS)

**ORDER**

Plaintiff Malibu Media, LLC ("Malibu") moves ex parte, pursuant to Federal Rule of Civil Procedure 26(d)(1), for leave to serve a third-party subpoena prior to the Rule 26(f) conference. Specifically, Malibu seeks to serve a subpoena on Time Warner Cable ("Time Warner"), an internet service provider ("ISP"), in order to ascertain the identity of the John Doe defendant in this case.

Malibu has made out a prima facie claim of copyright infringement "sufficient for purposes of this motion and appears to have no other way of obtaining the identities of the alleged infringers." Digital Sin, Inc. v. Does 1-176, 279 F.R.D. 239, 241 (S.D.N.Y. 2012). That is sufficient to satisfy Rule 26(d)(1)'s "flexible standard of reasonableness and good cause." Malibu Media, LLC v. Doe, No. 14 Civ. 8936 (VSB), slip op. at 2 (S.D.N.Y. Dec. 15, 2014) (quoting Digital Sin, Inc., 279 F.R.D. at 241).

There is good cause to issue a protective order in

connection with this subpoena in light of the risk of false positive identifications that could result in "annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c).

ACCORDINGLY, IT IS HEREBY ORDERED that Malibu may serve a Rule 45 subpoena on Time Warner, the ISP identified in its motion, to obtain John Doe's true name and current and permanent address. Malibu shall not subpoena John Doe's email addresses or telephone numbers. The subpoena shall have a copy of this order attached, along with the attached "Notice to Defendant."

IT IS FURTHER ORDERED that Time Warner will have 30 days from the date of service of the Rule 45 subpoena upon it to serve John Doe with a copy of the subpoena, a copy of this order, and a copy of the "Notice to Defendant." The order should be attached to the "Notice to Defendant" so that the "Notice to Defendant" is the first page of the materials enclosed with the subpoena. Time Warner may serve John Doe using any reasonable means, including written notice sent to her or his last known address, transmitted either by first-class mail or via overnight service.

IT IS FURTHER ORDERED that John Doe shall have 30 days from the date of service of the Rule 45 subpoena and this order upon her or him to file any motions with this court to quash or modify the subpoena, as well as any request to litigate the case

anonymously. Time Warner shall not turn over John Doe's information to Malibu before the expiration of this 30-day period. Additionally, if John Doe or Time Warner files a motion to quash or modify the subpoena, Time Warner shall not turn over any information to Malibu until the court issues an order instructing Time Warner to do so.

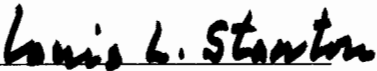
IT IS FURTHER ORDERED that, if that 30-day period lapses without John Doe or Time Warner contesting the subpoena, Time Warner shall have 10 days to produce to Malibu the information responsive to the subpoena.

IT IS FURTHER ORDERED that Time Warner shall preserve any subpoenaed information pending the resolution of any timely-filed motion to quash or modify.

IT IS FURTHER ORDERED that Time Warner shall confer with Malibu and shall not assess any charge in advance of providing the information requested in the subpoena. Should Time Warner elect to charge for the costs of production, it shall provide a billing summary and cost report to Malibu.

IT IS FURTHER ORDERED that any information ultimately disclosed to Malibu in response to a Rule 45 subpoena shall be used by Malibu solely for the purpose of protecting its rights as set forth in its complaint.

Dated: New York, New York  
July 30, 2015

  
\_\_\_\_\_  
LOUIS L. STANTON  
U.S.D.J.

**NOTICE TO DEFENDANT**

1. You are the defendant in Malibu Media, LLC v. John Doe, 15 Civ. 4742 (LLS), a case now pending before the Honorable Louis L. Stanton, United States District Judge for the Southern District of New York.
2. The plaintiff in the case, Malibu Media, LLC, claims that you have illegally downloaded and distributed certain movies on your computer.
3. Attached is Judge Stanton's Order, which sets forth certain deadlines and procedures for the case.
4. The Malibu Media does not know your actual name or address but knows the Internet Protocol address ("IP address") of the computer associated with the alleged downloading and distributing. It has filed a subpoena seeking your name and address from your Internet Service Provider ("ISP"), Time Warner Cable.
5. You may hire a lawyer to represent you or you may proceed pro se (that is you may represent yourself without the assistance of a lawyer). If you choose to proceed pro se, all communications with the court must be through the Pro Se Office of the United States District Court for the Southern District of New York. The Pro Se Office is located in Room 200 of the United States Courthouse, 500 Pearl Street, New York, N.Y. 10007 and may be reached at (212) 805-0175. It can give you forms and procedural assistance. Information about proceeding pro se is available on its website at [www.nysd.uscourts.gov/courtrules\\_prose.php](http://www.nysd.uscourts.gov/courtrules_prose.php)
6. If you believe there is a basis for the ISP to withhold the information about your identity, you may act by filing with the court a motion to quash or modify the subpoena. This must be done within 30 days of the date that you receive this notice from your ISP. Identify yourself in your motion by the case number--15 Civ. 4742 (LLS)--and your IP address, not your true name.
7. If you choose to proceed pro se, your motion to quash or modify the subpoena must be mailed or submitted in person

to the Pro Se Office, as described in paragraph 5. Copies must also be sent to the ISP to inform it of your court action so the ISP will not disclose anything to Malibu Media until the court has ruled.

8. Even if you do not file a motion to quash or modify the subpoena, you may still ask to proceed anonymously at this time. This means that the court and Malibu Media will know your identity and contact information, but your identity will not be made public unless and until the court determines that it should be disclosed.
9. If you want to proceed anonymously without filing a motion to quash or modify the subpoena, you (or, if represented, your lawyer) should submit a letter stating that you wish to proceed anonymously in your case. If you choose to proceed pro se, your letter must be mailed or submitted in person to the Pro Se Office, as described in paragraph 5. This must be done within 30 days of the date that you receive this notice from your ISP. Identify yourself in your letter by the case number--15 Civ. 4742 (LLS)--and your IP address, not your true name. If you submit this letter, then your identity and contact information will not be revealed to the public unless and until the court directs otherwise.
10. If you are representing yourself and move to quash or modify the subpoena or ask to proceed anonymously, you must complete the attached "Confidential John/Jane Doe Contact Information" form and submit it to the Pro Se Office along with your letter. The court must have this information so that it may communicate with you regarding the case. The form will not be revealed to Malibu Media or the public.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:
	:
Plaintiff,	:
	:
-against-	:
	:
	:
Defendant.	:
-----X	

**CONFIDENTIAL**  
**JOHN/JANE DOE # \_\_\_\_\_**  
**CONTACT INFORMATION**  
  
(FILED AS COURT-VIEW ONLY)  
  
\_\_\_ Civ. \_\_\_\_\_ ( ) ( )  
  
member case, if appropriate:  
  
\_\_\_ Civ. \_\_\_\_\_ ( ) ( )

My name is: \_\_\_\_\_.

I am John/Jane Doe Defendant # \_\_\_\_\_ in this case.

My IP address is: \_\_\_\_\_.

I can be reached by mail at: \_\_\_\_\_  
\_\_\_\_\_.

I can be reached by telephone at: \_\_\_\_\_.

I understand that, unless otherwise ordered by the Court, this information will remain confidential and only Court personnel will have access to it.

Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signed Name: \_\_\_\_\_